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Attorneys for Plaintiffs, VERONICA GUTIERREZ, ERIN WALKER
and WILLIAM SMITH, on behalf of themselves and all others similarly situated,

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

VERONICA GUTIERREZ, ERIN WALKER and)
WILLIAM SMITH, as individuals, and on behalf)
of all others similarly situated,)

Plaintiffs,)

v.)

WELLS FARGO & COMPANY; WELLS)
FARGO BANK, N.A.; and DOES 1 through 125,)

Defendants.)

Case No.: C 07-05923 WHA (JCSx)
CLASS ACTION

**DECLARATION OF WILLIAM SMITH IN
SUPPORT OF PLAINTIFFS' OPPOSITION
TO DEFENDANT'S MOTION FOR
SUMMARY JUDGMENT**

Judge Assigned: Hon. William H. Alsup
Complaint Filed: November 21, 2007

I, William Smith, do declare as follows:

1. I am 52 years old and consider myself a sophisticated financial consumer. I own my own business and have five separate accounts (business and consumer) with Wells Fargo. I have been banking with Wells Fargo since the early 1990's. I have been doing my banking online since approximately 2003.
2. In 1999, I opened the subject checking account as a personal checking account and received a debit card that I could use for debit, check card and ATM transactions. I used this account for personal expenditures. It was not the account from which I paid the regular bills. From when I started online

1 banking in 2003, I have heavily relied on "available balance" information on the website to monitor
2 my accounts. I usually monitor each of my accounts daily. This would involve checking that
3 transactions were posted as pending transactions, so I would know I could rely on the available
4 balance information. If necessary, I could transfer money between accounts online when an account
5 balance would get low. This convenience of having the online information of the most current
6 picture of my funds was important.

- 7 3. On July 3, 2007, I checked my online balance and noted I had about \$300 of available balance. I
8 bought \$68.85 of fireworks using my debit card. I saw that charge was listed on my account as a
9 pending charge shortly thereafter, and the charge had been deducted from my available balance.
10 Over the next nine days I monitored my available balance information with the belief that the
11 fireworks charge had and was still deducted from the "available balance" information provided to
12 me by Wells Fargo.
- 13 4. On July 12, 2007, I checked my available balance and noted I had about \$50 in the account. I was
14 aware that each of my previous charges had posted on my account as a pending charge and that I had
15 not written any checks. I had every reason to believe the "available balance" information was
16 accurate. I then bought groceries for \$24.76.
- 17 5. I was unaware that Wells Fargo had removed the fireworks charge from my available balance.
18 While I knew from one other occasion that it was possible for a transaction to fall off the available
19 balance, even though it had already been listed as a pending charge, I was not told how, why or
20 when that could happen. If the fireworks charge had not been listed as a pending charge and then
21 without notice dropped off the "available balance", providing me with inaccurate and inflated
22 available balance information, I would have transferred funds from another account into the subject
23 account and would not have incurred either overdraft fee.

24 I so declare the above is true and correct under penalty of perjury under the laws of the United States.

25 Executed this 30 day of July, 2008, at YUCAIPA, California.

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27
28 

William Smith